contents of a gramophone record into the form of a cartridge or a cassette tape is not a pirated copy of such gramophone record within the definition contained in the Act. In other words the contention is that only a reproduction of the contents of a gramophone record into the form of a gramophone record and in no other form would come within the definition. I am unable to accept this contention. In my opinion the definition must be read in the context of the Act as a whole. The Act is an enactment dealing specifically with one subject matter, namely, the provision of penalties for infringement of copyrights in gramophone records and to permit Government to broadcast by radio or television musical works or gramophone records without infringing any copyright. The Act creates one offence only, namely, by providing that any person "who makes, reproduces, imports for sale, sells, exposes or offers for sale, or has in his possession for sale, any pirated copies of any gramophone record, shall be guilty of an offence" and provides the penalty for such offence. The Act does not leave the expression "gramophone record" to be construed in its ordinary dictionary meaning but gives it a much wider meaning by defining it in section 2 (see *supra*).

Accordingly, in my judgment the cartridge and cassette tapes found in the possession of the appellant come within the definition of "pirated copies" in the Act.

Another contention put forward is that the magistrate ought to have found, on the evidence, that the appellant had shown on the balance of probabilities that at the time of the commission of the offence she had no reason to suspect that she was dealing with pirated copies and that in all respects she had acted innocently as provided by section 3(2) of the Act. This is a pure question of fact and in my opinion there was abundant evidence before the magistrate to entitle him to reject this defence.

Yet another contention urged before me is that on the evidence as a whole there was a doubt as to whether the cartridges and cassette tapes in question were pirated copies of the E.M.I. and Decca copyrights. This again is a pure question of fact and there was clear evidence to justify this particular finding of fact.

The last contention is that the fine imposed of $500 was manifestly excessive but in my opinion there is clearly no substance in this contention having regard to all the facts before the magistrate.

The appeal against conviction and sentence is dismissed.

Appeal dismissed.

Solicitors: *Ironside & de Souza.*

KONINKLIJKE BUNGE N.V. v. SINITRADA CO. LTD.

[O.C.J. (Winslow J.) March 23, 1973]

[Singapore — Originating Summons No. 244 of 1971]

Practice and Procedure — Foreign judgment — Registration of English judgment — Application to set aside judgment — Whether parties had agreed to arbitration and to accept jurisdiction of English courts — Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24), s.3(2)(a) and (b) — R.S.C. 1970, O. 67 r. 9(3).

This was an application to set aside the registration of a judgment of the High Court in England which was obtained after leave had been given to enforce an arbitrator's award. The judgment debtors alleged that they had not agreed to a term providing for arbitration and for acceptance of the jurisdiction of the English courts.

Held: (1) on the facts there was a contract between the parties which included the provisions for arbitration and the jurisdiction of the English courts and there was material before the High Court in England justifying the conclusion that leave should be granted to enforce the arbitrator's award as a judgment of the English High Court;

(2) in all the circumstances of the case there was nothing to show that it would not be just and convenient for the English judgment to be enforced in Singapore and there were therefore no sufficient grounds for setting aside the registration of the English judgment.

Cases referred to:-

(1) *Heyman & Anor.* v. *Darwins Ltd.* [1942] A.C. 366, 367.

(2) *M. Golodetz* v. *Schrier & Anor.* (1947) 80 Ll.L.R. 647.

(3) *Frank Fehr & Co.* v. *Kassim Jivraj & Co. Ltd.* (1949) 82 Ll.L.R. 673.

(4) *Reuss & Anor.* v. *Picksley & Anor.* L.R. (1866) 1 Exch. Cases 342.

(5) *Smith* v. *Neale* 140 E.R. 337.

(6) *Plasticmoda Societa per Azioni* v. *Davidsons (Manchester) Ltd.* [1952] Ll.L.R. 539.

ORIGINATING SUMMONS.

C. Arul for the applicants.

G. Pannirselvam for the respondents.

Winslow J.: This is an application on the part of the judgment debtors (hereinafter referred to as "Sinitrada") to set aside the order for registration made on 24th September, 1971 in Singapore of a judgment obtained in favour of the judgment creditors (hereinafter referred to as "Bunge") in the High Court of England on 27th April, 1970.

The said judgment was obtained after leave had been given to Bunge to enforce an arbitrator's award made in London dated 20th November, 1969 in the total sum of £3,360 11s. 7d. in the same manner as a judgment or order of the High Court of England to the same effect, together with taxed costs.

The order for registration of the said judgment in Singapore dated 24th September, 1971 was obtained *ex parte* under section 3 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24) (hereinafter referred to as the "Act") which provides that the High Court of Singapore may order such an English judgment to be registered if, in all the circumstances of the case, it thinks it is just and convenient that the judgment should be enforced in Singapore and subject to the provisions of this section. This

section then proceeds to set out restrictions on registration, and gives such a registered judgment the same force and effect as if it had been a judgment originally obtained in the High Court of Singapore at the date of registration. It also provides for the making of rules enabling a judgment debtor to apply to the High Court to set aside such registration on such terms as the court thinks fit.

Sinitrada accordingly made the present application on 11th April 1972 having previously obtained the necessary extension of time. In making their application to set aside the registration they rely mainly on section 3(2)(a) and (b) of the Act and on Order 67 rule 9(3) of the Rules of the Supreme Court which read as follows: —

"3(2) No judgment shall be ordered to be registered under this section if —

(a) the original court acted without jurisdiction; or

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;"

"O. 67 r. 9(3) Where the court hearing an application to set aside the registration of a judgment registered under the Ordinance is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 3(2) of that Ordinance or that it is not just or convenient that the judgment should be enforced in Singapore or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit."

The undisputed facts which appear from the affidavits filed herein are set out below.

A. On 31st May 1968 Sinitrada through their Managing Director, Dr. Oey Jam Hoey made Bunge an offer (at AB4) at their address in Singapore (attention: Mr. J. L. M. van Lennep) in the following terms: —

"We herewith offer your firm Illipenuts at a price of £152 — per longton C & F European ports for shipment June/July 1968.

Other conditions remain the same as in our letter dated 25th April, under Ref: 248/68.

This offer is firm until Tuesday 4th June, 1968 12.00 hrs. noon."

B. Their letter of 25th April 1968 (AB1) reads:

"We herewith offer your firm:

Commodity	:	Illipenuts large and/or small, black and/or brown, Siak excluded.
Quantity	:	200 longton NDW.
Quality	:	Pontianak, soaked and dried, new crop faq.
Packing	:	in gunny bags containing about 80 kgs.
Price	:	N. fl. 1310 — per longton C & F Rotterdam or Amsterdam.
Contract	:	based on I.O.S.A. No. 50.
Delivery	:	April, May and June, 1968.
Freight	:	payable at destination, for your account.
Letter of Credit	:	to be established in our favour to a value of 95% on fob value.
Documents	:	Through Bill of Lading, Pontianak via Singapore to Holland.
Insurance	:	to be covered by yourselves.

This offer is firm until Saturday the 27th day of April, 1968 12.00 hours (noon)."

C. It will be seen that the offer of 31st May 1968 incorporates the conditions set out in AB1 and that, but for changes relating to price, time of acceptance, and shipment, it is practically a renewal of the same offer.

D. This offer was accepted by Bunge. Mr. van Lennep in his affidavit of 20th October 1972 stated that, as representative of Bunge in Singapore, he accepted the offer on behalf of Bunge before it expired at 12.00 noon on 4th June 1968, which acceptance he communicated to Dr. Oey of Sinitrada by telephone.

E. A letter of credit was subsequently established but it fell slightly short of the amount required to be established by the offer at AB4 and on 6th June 1968 Sinitrada, through Dr. Oey, wrote to Bunge (attention: van Lennep) as follows, at AB5: —

"Our bankers have informed us that you have opened a letter of credit to a value of £23,800 — only representing 95% of the fob value. We regret to let you know that this amount does not represent 95% of the fob value because your freight deduction is more than what it should be. The net value representing 95% of the fob value should be £24,261/17s.

We regret therefore we cannot accept your letter of credit."

F. A letter of credit in the correct amount was established by 13th June 1968 (see AB25) which was unacceptable to Sinitrada who, by letters of 11th June, 1968, had notified Bunge in Singapore cancelling the transaction and had informed their bankers that they would not be utilising the original letter of credit (see AB7 and 9).

G. A deadlock arose as to whether a contract existed in the light of Bunge's failure to establish a letter of credit for the correct amount by 6th June 1968 when the letter of credit for the smaller amount was in fact established and rejected by Sinitrada the same day. Bunge's claim for damages in an arbitration claim against Sinitrada for breach of contract as set out in their letter of 27th March 1969 at AB13 asking the latter to appoint their own arbitrator under rule 3 of the Arbitration Rules of the Incorporated Oil Seed Association of London (I.O.S.A.) was accordingly resisted in no uncertain terms. The association then nominated an arbitrator on their behalf in view of their refusal to appoint one themselves.

H. Sinitrada took the stand that they had signed no I.O.S.A. Contract Form and that they were not members of the I.O.S.A.

I. The association replied at AB18 on 9th July, 1969 to Sinitrada as follows: —

"Thank you for your letter dated 7th July I would inform you that the photostat copy of the contract lodged by Bunge N.V. Amsterdam states that conditions of I.O.S.A. Contract No. 50 apply and so arbitration is to be held under our rules. Whether you are a member of the Association or not is of no consequence.

The Association is in no way concerned with the merits of the case, and you will have an opportunity of putting your case at the arbitration, through your arbitrator."

J. At AB19, the association on 15th July, 1969 wrote to counsel for Sinitrada: —

"I would like to emphasise that the evidence I have before me indicates a contract which *inter alia* states 'I.O.S.A. Contract No. 50'. This brings the matter within our rules of arbitration. The use of our forms of contract or any portion

therefore is open to any one whether they are members or not."

K. To this, counsel replied at AB21 and AB22 that though Sinitrada may have been willing to sign an I.O.S.A. contract they denied entering into any and took exception to the arbitration by which they did not agree to be bound and which they regarded as wrongful. They also similarly informed the arbitrator nominated on their behalf by the association. Counsel at AB24 even cited Viscount Simon L.C. (in, presumably, *Heyman & Anor.* v. *Darwins Ltd.*[1]) where he said,

"If the dispute is whether the contract which contains the clause has ever been entered into at all, that issue cannot go to arbitration under the clause, for the party who denies that he has ever entered into the contract is thereby denying that he has ever joined in the submission".

At the hearing of this summons to set aside the registration of the English judgment, Mr. C. Arul, counsel for Sinitrada, stressed their denial of any agreement that any dispute should be arbitrated in London and that they had never carried on business nor been ordinarily resident in the United Kingdom nor had they voluntarily appeared or otherwise submitted to the jurisdiction of the High Court in England. He submitted that there never was any concluded contract between the parties, that the *lex loci* was the law of Singapore, that time was of the essence and that a contract (if any) "based on I.O.S.A. No. 50" could not be a contract which incorporated all the terms of I.O.S.A. Contract No. 50. In his reply to Mr. Pannirselvam's argument, *contra*, he stressed the acceptance of the offer at AB4 was conditional on Bunge's opening a letter of credit for the correct amount immediately after 12 noon on 4th June, 1968 which they did not do. Shipment he said was intended to be made forthwith.

Mr. Pannirselvam, counsel for Bunge, relied on Lord Goddard C.J.'s judgment in *M. Golodetz* v. *Schrier & Anor.*[2] where he held that a firm contract was entered into between the parties which incorporated the Rules of the London Refined Sugar Association one of which provided for submission to arbitration in London. He accordingly held the plaintiffs entitled to judgment on the arbitrators' award notwithstanding the failure of the defendants to appear at the arbitration.

The question therefore arises whether, in view of Viscount Simon's declaration of the law in the *Heyman* case cited earlier, there was in fact a contract between the parties in the present case because, if there was no contract, as Sinitrada contended, the submission to arbitration contained in the contract would fail and the dispute would not have been referrable to arbitration.

It should be noted that it was in their written offer at AB4 that Sinitrada themselves referred to the condition that the contract between them should be "based on I.O.S.A. No. 50". It was accordingly within the contemplation of the parties that a contract would eventually be drawn up and signed which would be founded or established on the form known as I.O.S.A. No. 50 used by the Incorporated Oil Seed Association of London. This form contains a provision at clause 18 for arbitration of disputes according to Rules relating thereto set out therein (see AB28/29) and at clause 17 for the jurisdiction of the English courts and the application of English law.

It has to be determined whether all the terms set out at AB28/29 and contained in I.O.S.A. No. 50 can be said to have been incorporated by reference thereto in the contract between the parties as evidenced by AB4 and AB1 and its acceptance by Bunge albeit conditional on the establishment of a letter of credit in the required amount.

It should also be remembered that one of the main contentions of Sinitrada is that they never signed such a form as Form 50 and that they thereby did not agree to submit to arbitration thereunder etc. As I have already observed, it was Sinitrada who first mentioned in their offer that one of the terms and conditions was that the contract would be based on I.O.S.A. Form 50. It seems to me that they should have known what this form contained, if any meaning is to be given to their offer. It is not suggested anywhere that Bunge were responsible for this reference although, from the material before me, the rather naive stand seems to have been taken by Sinitrada that they were unaware of the terms of this "blank form" as though they had never seen one before.

It seems to me that there was a contract between the parties which did include the arbitration provisions contained in Form 50. Although the actual form was not signed by Sinitrada it seems to me that as Lord Greene M.R. said in *Frank Fehr & Co.* v. *Kassam Jivraj & Co. Ltd.*[3]

"On that footing, what we have to look for, therefore, is a signature authenticating, recognizing, or incorporating — whatever word one chooses to use — a written document containing an agreement to submit."

In my view, that was the situation in the case before me and I hold that there was material before the High Court of Justice of England justifying the conclusion that leave should be granted to enforce the arbitrator's award made herein as a judgment of the English High Court.

The further question that arises is whether there is anything in the merits of the case as put before the arbitrators by Bunge in the absence of Sinitrada which requires me to say that it would not be just and convenient for the English judgment to be enforced here. It was argued that on 12th June 1968 there was no concluded contract because of failure to comply with the condition that a letter of credit should be established forthwith, *i.e.* immediately after 12 noon on 4th June, 1968. Sinitrada sought to repudiate the contract, which I have found did exist, by their letters of 11th June 1968, on the ground that no letter of credit in the correct amount was established within 48 hours of noon on 14th June 1968. There is nothing in the affidavits before me to satisfy me that the earliest shipment in the shipment period of June/July 1968 had been arranged for any particular date earlier than 13th June, 1968 when in fact a correct letter of credit was established. From AB7 and AB10 it is far from clear that Dr. Oey was awaiting the conclusion of a fresh contract. He in fact gave time, according to

AB7, for "you to rectify the correct fob value". There is no mention of any fresh contract and he, all along, during those vital days around 11th June 1968, was thinking in terms of the contract at AB4 which he "reserved the right to consider cancelled".

I would add, for the removal of doubt, that in my view, the written offer signed by Sinitrada in the light of its oral acceptance by Bunge constitutes a sufficient note or memorandum of the contract within section 6 of the Civil Law Act (Cap. 30) if the law of Singapore as the *lex loci* applies to its enforceability. (See *Reuss and anor.* v. *Picksley and anor.*[4] and *Smith* v. *Neale*[5]). I have found that the terms of Form No. 50 including clause 17 thereof are incorporated in this contract, the proper law is English law. I mention this because Mr. Arul advanced the argument that the *lex loci contractus* was applicable, without developing this point further, and I have therefore considered whether, if section 6 aforesaid applies, any valid argument exists for saying that no enforceable contract ever came into existence in the first place. English law of course has removed the necessity for, *inter alia*, a note or memorandum in writing of the contract by virtue of the repeal of section 4 of the Sale of Goods Act, 1893. The position in Singapore in this respect is as it was before such repeal because of section 6 of the Civil Law Act.

In all the circumstances I have, after also considering the authorities cited relating to the time for opening letters of credit in relation to the shipment period, come to the conclusion that there are no sufficient grounds for setting aside the registration of the English judgment herein (see *Plasticmoda Societa Per Azioni* v. *Davidsons (Manchester) Ltd.*[6] per Denning L.J.).

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*

PUBLIC PROSECUTOR v. GOH SEOW POH

[A.Cr.J. (Wee Chong Jin C.J.) April 11, 1973]

[Singapore — Magistrate's Appeal No. 79 of 1972]

Newspaper — Publication of letter from members of Singapore Armed Forces without verifying the names and particulars of the writers — Failure to give information to Ministry of Defence — Essential (Control of Publications and Safeguarding of Information) Regulations, 1966 — Emergency (Essential Press) Act (Cap. 114).

In this case the respondent, the editor of the *Nanyang Siang Pau* was charged with two charges under the Essential (Control of Publications and Safeguarding of Information) Regulations, 1966 in respect of a letter signed by "a group of soldiers" which was published in the paper. The charges alleged that the respondent had published the letter without first verifying the names and identities of the members of the armed forces who wrote the letter, their places of residence and the armed force to which they were attached and without establishing that the letter was in fact written by such members; and that on being required by the Ministry of Defence to furnish particulars in respect of the writers he failed to give such information. He was acquitted in the District Court on the ground that the prosecution had not made out a case in respect of both charges. The Public Prosecutor appealed.

Held: (1) on the facts of the case, the prosecution at the close of its case had established *prima facie* that the respondent published the letter after having received it from some members of the Singapore Armed Forces without making any enquiries whatsoever after receipt of the letter;

(2) on the evidence at the close of the prosecution case, it was clear that the respondent, *prima facie* had failed to divulge the information requested;

(3) non-compliance with a regulation under the Act falls within the ordinary meaning of the word "contravenes" and therefore is punishable under section 6 of the Emergency (Essential Powers) Act, which prescribes the punishment for any person who contravenes any regulation made under the Act, where no other penalty is provided by the regulation;

(4) in this case the respondent ought to have been called to enter his defence and therefore the order of acquittal should be set aside and the case remitted to the trial court.

MAGISTRATE'S CRIMINAL APPEAL.

Chia Quee Khee (Deputy Public Prosecutor) for the Public Prosecutor.

Sim Teow Gok for the respondent.

Wee Chong Jin C.J.: On 12th January 1972, the *Nanyang Siang Pau*, a Chinese daily newspaper, published a letter (hereinafter referred to as "the said letter") which as translated reads thus: —

"How To Be Discharged Earlier To Enter University

We are a group of soldiers still undergoing National Service and also Pre-University graduates of 1969. Though we had enrolled and were admitted to University in 1970, we are unable to enter the University to study because of National Service. The University authorities have promised our positions.

The date of our completion of National Service falls in Oct. 1972, hence all of us hope we can enter the University to study in July this year. (University session begins in July).

Therefore, through your honourable press, we hope to seek the advice of the Manpower Base on the following:

a) We intend to leave the camp 3 months earlier to enter the University to study, the balance of the National Service period be completed during University vacation. Can this be possible?

b) How to make such an application?

c) We are deeply obliged for an early reply from the authorities.

A group of soldiers."

As a result of the publication of the said letter, the Permanent Secretary to the Ministry of Defence wrote to the editor of that newspaper requiring him, in accordance with regulation 5B(2) of the Essential (Control of Publications and Safeguarding of Information) (Amendment) Regulations, 1970, to furnish to the Permanent Secretary particulars of (a) the names and identities; (b) the places of residence and (c) the units to which they are attached, of the writers of the said letter. The General Manager of Nanyang Publications (Pte) Ltd., the publishers of the *Nanyang Siang Pau* newspaper replied that as it was an anonymous letter they were "not in a position to furnish the information as requested . . . ". The decision to publish the said letter was taken by the respondent who deals with letters from readers and edits the editorial and "Public Opinion Page" of the newspaper.